In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1547

ROBERT LAWRENCE DILLON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

After a jury-waived trial in the United States District Court for the Northern District of California, petitioner was convicted of having wilfully disobeyed the order of his local Selective Service board to submit to induction, in violation of 50 U.S.C. App. 462. Petitioner was sentenced to 18 months' imprisonment and fined $2,500. Execution of sentence was suspended on the condition that petitioner obtain work of national importance. The court of appeals affirmed (Pet. App. A).

Petitioner contends that the issue in the instant case is identical to that in a case presently pending before this Court, *Ehlert* v. *United States,* No. 1383,

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certiorari granted, May 4, 1970—*i.e.,* whether the alleged maturation of conscientious objector beliefs is, within the language of 32 C.F.R. 1625.2, a circumstance "over which the registrant had no control." However, the record at trial, which is recounted in some detail in the opinion below, casts doubt on the notion that petitioner underwent a crystallization of his objector views only after receipt of an induction notice.

In April 1966, approximately one month after passing a pre-induction physical examination, petitioner submitted an SSS Form 150, the form for conscientious objectors, in which he indicated that his objection was to combatant service (S.S. 45).[1] After a personal interview he was classified I–A–0, eligible for non-combatant service.[2] After receiving a notice of induction, petitioner wrote to the board seeking reclassification from I–A–0 to I–0, exempt from both combatant and non-combatant training and service in the Armed Forces. Petitioner stated that during the past few months he had developed and refined his ideas concerning conscientious objection, and that following his interview, he realized that he had deceived himself into thinking he could serve in a non-combatant status.

[1] "S.S." refers to petitioner's Selective Service file, a copy of which is being lodged in this Court.

[2] A report of the interview indicates that the petitioner stated that he did not object to non-combatant duty, that he would like to do something not directly involved in the war effort, like working in a hospital (S.S. 51).

He claimed he would have applied for I–O classification originally if it were not for his "ignorance of the existent classifications, and [his] total lack of advice and counsel at that time" (S.S. 53). The board reviewed the petitioner's file and determined the facts did not warrant reopening or reclassification of his case (S.S. 55).

Petitioner thereafter refused to step forward for induction. After a second review of petitioner's file,[3] the board again ordered him to report for induction (Pet. App. A2). At the induction center petitioner informed the first man he talked to that he was refusing induction (Tr. 31). He was not given a second physical inspection.[4] Again, petitioner refused to take the ceremonial step forward for induction.

As the court below indicated, it found it unnecessary, on the instant record, to reach the crystallization theory involved in *Ehlert* v. *United States*, 422 F. 2d 332 (C.A. 9) (Pet. App. A3). Petitioner's representations to the board arguably negate any con-

[3] Petitioner, after the August 2, 1966 letter, addressed other letters to Selective Service officials requesting reclassification (S.S. 57, 66). Various citizen letters were likewise submitted on his behalf concerning petitioner's sincerity (S.S. 61, 62–63).

[4] Petitioner received a pre-induction physical on March 18, 1966. He received a physical inspection on the first reporting date for induction, August 17, 1966. The second reporting date, based as it was upon the original order, was, as the court below noted, no more than a continuation of the original induction procedure.

tention that his objection to non-combatant service matured after the order to report for induction.[5] Nonetheless, the court below went on to state that, "[a]ssuming * * * that the record supported [petitioner's] claims of a crystallization of his conscientious objections subsequent to his notice to report for induction, [its] decision * * * would be controlled by *Ehlert* v. *United States, supra*" (Pet. App. A3). In these circumstances, we recognize that, despite the factual differences, the Court might wish to defer action on the present petition until after it has decided the *Ehlert* case.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1970.

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[5] Petitioner also claims a denial of due process in that the Board took no notice of notification that the petitioner was a student (Pet. 15). But no claim is made that petitioner was entitled to a student deferment at the time of his induction or that he, himself, requested a second such exemption (S.S. 88–89A; Tr. 10, 54, 56).

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